

REMARKS

This paper is responsive to the Office Action dated October 10, 2007. Claims 1-3, 5-9, 12, 13, 15-18, 21 and 22 are currently pending in the subject application. Claims 1, 7 and 9 have been amended. Claims 12 and 13 have been withdrawn from consideration. Support for all amended claims can be found in the specification, and no new matter has been added by these amendments. Reconsideration of the claims in view of the amendments and the following remarks is respectfully requested.

Restriction Requirement

In the response to the restriction requirement dated August 13, 2007, Applicants elected claims in Group I. However, when identifying the individual claims elected, Applicants inadvertently failed to include claim 9 in the listing of elected claims. Applicants submit that claim 9 was elected along with the claims of Group I. Thus, claims 1-3, 5-9, 15-18, 21 and 22 have been elected in the response to the restriction requirement.

Claim Rejections under 35 U.S.C. §102

The Office Action rejected claims 1 and 9 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Publication No. 2002/0019870 to *Chirashnya*. Without conceding the merits of the rejection, Applicants respectfully submit that the claims overcome this rejection.

Claim 1 recites in part "a traffic measuring and judging unit which measures traffic of all communication packets received in the interface, and traffic of a communication packet judged not to be the packet with said format in said first filter, respectively, and by using the both traffics, judges whether a communication failure is generated or not."

In other words, claim 1 discloses measuring the traffic of all communication packets and the traffic of unformatted communication packets. A determination is then made whether a communication failure is generated using both traffic measurements.

In contrast, *Chirashnya* discloses a manageable network. The network is monitored for errors and failures, such as packet corruption or devices not responding, and for statistics that may reflect abnormal functionality. (See paragraph [0047]). Global fault information in a fault model describes possible malfunctions in the network and their expected

rates. Malfunction probabilities in the fault model are expressed in terms of failure rates, such as an estimated mean time between failures (MTBF). (See paragraph [0054]). A recommendation and explanation generator receives malfunction assessments computed by a diagnostic engine, and compares the assessments for different modules in the network to expected, baseline values held in the fault model. When the failure rate assessment for a given module is significantly higher than its baseline value, a user is recommended to take further diagnostic action or to replace the module. (See paragraph [0059]). This is different from what is recited in claim 1 because *Chirashnya* does not disclose measuring two different types of packet traffic to determine whether a failure has occurred. Rather, *Chirashnya* discloses determining whether a failure rate is higher than expected.

Neither *Chirashnya* nor any of the other cited references, alone or in combination, teach all of the features recited in independent claim 1. Specifically, *Chirashnya* does not disclose "a traffic measuring and judging unit which measures traffic of all communication packets received in the interface, and traffic of a communication packet judged not to be the packet with said format in said first filter, respectively, and by using the both traffics, judges whether a communication failure is generated or not." For at least this reason, claim 1 is allowable over the cited art.

Independent claim 9 recites features that are similar to the features recited in claim 1. As discussed above with reference to claim 1, the cited art does not teach these features. Thus, claim 9 is also allowable over the cited art for at least the same reasons.

In view of the foregoing, withdrawal of the rejection of claims 1 and 9 under 35 U.S.C. 102(e) is respectfully requested.

Claim Rejections under 35 U.S.C. §103

The Office Action rejected claims 2, 3, 5-7 under 35 U.S.C. § 103(a) as being unpatentable over *Chirashnya* in view of U.S. Patent No. 6,622,220 to *Yoshida*. The Office Action rejected claims 8 and 15-18 under 35 U.S.C. § 103(a) as being unpatentable over *Chirashnya* and *Yoshida* in view of U.S. Patent No. 7,137,145 to *Gleichauf*. The Office Action rejected claim 21 under 35 U.S.C. § 103(a) as being unpatentable over *Chirashnya* in view of

U.S. Patent No. 7,185,266 to *Blightman*. The Office Action rejected claim 22 under 35 U.S.C. § 103(a) as being unpatentable over *Chirashnya*, *Yoshida*, *Gleichauf* and *Blightman*. Without conceding the merits of the rejection, Applicants respectfully submit that the claims overcome this rejection.

Claims 2, 3, 5-8 and 21 depend from claim 1. The rejection of claims 2, 3, 5-8 and 21 is premised on the assertion that *Chirashnya* discloses the features recited in claim 1, and at least one of *Yoshida*, *Gleichauf* and *Blightman* discloses the remaining features of claims 2, 3, 5-8 and 21.

As discussed above, however, *Chirashnya* does not disclose or suggest all features recited in amended claim 1. As best understood, *Yoshida*, *Gleichauf* and *Blightman* do not provide any teaching or suggestion that would remedy this deficiency. Therefore, the rejection is based on a flawed premise and cannot be maintained.

Claim 15 recites "a traffic measuring and judging unit which measures traffic of all communication packets received in the interface, and traffic of a communication packet judged not to be the packet with said format, respectively, and by using the both traffics, judges whether a communication failure is generated or not."

As discussed above with reference to claim 1, however, *Chirashnya* does not disclose or suggest this feature. As best understood, *Yoshida* and *Gleichauf* do not provide any teaching or suggestion that would remedy this deficiency. Therefore, the rejection is based on a flawed premise and cannot be maintained. For at least this reason, claim 15 is allowable over the cited art, as are claims 16-18 which depend from claim 15.

Claim 22 depends from claim 15. The rejection of claim 22 is premised on the assertion that *Chirashnya*, *Yoshida* and *Gleichauf* disclose the features recited in claim 15, and *Blightman* discloses the remaining features of claim 22.

As discussed above, however, *Chirashnya*, *Yoshida* and *Gleichauf* do not disclose or suggest all features recited in claim 15. As best understood, *Blightman* does not provide any teaching or suggestion that would remedy this deficiency. Therefore, the rejection is based on a flawed premise and cannot be maintained.

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Accordingly, Applicants respectfully request withdrawal of the rejection of claims 2, 3, 5-8, 15-18, 21 and 22 under 35 U.S.C. 103(a).

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 206-467-9600.

Respectfully submitted,

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Date

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